

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC	)	WT Docket No. 08-95
	)	
For Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and De Facto Transfer Leasing Arrangements	)	File Nos. 0003463892, <i>et al.</i> , ITC-T/C- 20080613-00270, <i>et al.</i>
	)	
and	)	
	)	
Petition for Declaratory Ruling that the Transaction is Consistent with Section 310(b)(4) of the Communications Act	)	File Nos. ISP-PDR-20080613-00012
	)	

**ORDER ON RECONSIDERATION**

**Adopted: December 17, 2012**

**Released: December 19, 2012**

By the Commission:

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## I. INTRODUCTION

1. In this Order on Reconsideration, we address petitions seeking reconsideration of certain decisions made by the Commission when it approved the Verizon Wireless-ALLTEL transaction.<sup>1</sup> The issues raised by petitioners concern the spectrum screen applied by the Commission, roaming, universal service support, network openness, handset availability and exclusive handset agreements, divestitures, and a request for a right of first negotiation relating to divestitures.

2. Pursuant to Section 1.106(c) of the Commission’s rules,<sup>2</sup> it is well established that reconsideration is appropriate “only where the petitioner either shows a material error or omission in the original order or raises additional facts not known or existing until after the petitioner’s last opportunity to present such matters.”<sup>3</sup> As discussed below, we deny all of the petitions for reconsideration for failure to meet this standard, to the extent they are not moot.

## II. BACKGROUND

3. In the *Verizon Wireless-ALLTEL Order*, the Commission approved, subject to certain conditions, the applications of Cellco Partnership d/b/a Verizon Wireless (“Verizon Wireless”) and Atlantis Holdings LLC<sup>4</sup> (collectively the “Applicants”), which sought Commission approval of the transfer of control of licenses, authorizations, and spectrum manager and *de facto* transfer leasing arrangements through the transfer of control to Verizon Wireless of ALLTEL Corporation (“ALLTEL”) and various of its subsidiaries and partnerships in which ALLTEL had either controlling or non-controlling general partnership interests (collectively, “ALLTEL Subsidiaries and Partnerships”).<sup>5</sup> The transaction involved ALLTEL’s licenses that covered approximately 83.4 million POPs in 34 states.<sup>6</sup> The Commission found that competitive harm was unlikely in most of the markets that were at issue in the

<sup>1</sup> Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC For Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and *De Facto* Transfer Leasing Arrangements and Petition for Declaratory Ruling that the Transaction is Consistent with Section 310(b)(4) of the Communications Act, WT Docket No. 08-95, *Memorandum Opinion and Order and Declaratory Ruling*, 23 FCC Rcd 17444, 17445 ¶ 1 (2008) (“*Verizon Wireless-ALLTEL Order*” or “*Order*”).

<sup>2</sup> 47 C.F.R. § 1.106(c).

<sup>3</sup> *See, e.g.*, General Motors Corp. and Hughes Electronics Corp., Transferors, and The News Corp. Ltd., Transferee, For Authority to Transfer Control, MB Docket No. 03-124, *Order on Reconsideration*, 23 FCC Rcd 3131, 3132 ¶ 4 (2008).

<sup>4</sup> In 2007, ALLTEL was acquired by Atlantis, a Delaware limited liability company ultimately controlled by the principals of TPG Capital, L.P. and The Goldman Sachs Group, Inc. *See* ALLTEL Corporation, Form 602, File No. 0003382148, at Attachments 1, 2, 5 (Apr. 2, 2008).

<sup>5</sup> File No. 0003463892 was designated as the lead application for the wireless radio services. For a complete list of the applications involved in this transaction, see Verizon Wireless and Atlantis Holdings LLC Seek FCC Consent to Transfer Licenses, Spectrum Manager and *De Facto* Transfer Leasing Arrangements, and Authorizations, and Request on a Declaratory Ruling on Foreign Ownership, WT Docket No. 08-95, *Public Notice*, 23 FCC Rcd 10004 (WTB 2008).

<sup>6</sup> *See Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17450-51 ¶ 9. ALLTEL’s rural cellular and PCS license footprint represented approximately 90 percent of its total cellular and PCS licensed territory. *See Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17450-53 ¶¶ 9, 12-13; ULS Application, File No. 0003463892, Public Interest Statement, at 4 (filed June 13, 2008).

proposed transaction. The Commission stated that with regard to five local mobile telephony/broadband markets, the market-by-market analysis showed that the probable competitive harm exceeded the likely benefits of the transaction, and the Commission required full business unit divestitures to ameliorate the expected harm in these five markets.<sup>7</sup> In addition, the Commission conditioned approval of the transaction on Verizon Wireless's completion of its voluntary divestiture of business units in 100 markets, separate from these five markets. Moreover, the Commission concluded that it was in the public interest to condition the transaction on Verizon Wireless's compliance with certain specific conditions with respect to roaming, competitive eligible telecommunications carriers ("ETC") high cost support, and E911 location accuracy requirements.<sup>8</sup>

4. Chatham Avalon Park Community Council ("Chatham"), Leap Wireless International, Inc. ("Leap"), MetroPCS Communications, Inc. ("MetroPCS") and NTELOS, Inc. ("NTELOS"), Public Interest Spectrum Coalition ("PISC"), Public Service Communications, Inc. ("PSC"), Rural Telecommunications Group ("RTG"), and U.S. Cellular, *et al.*, filed petitions for reconsideration.<sup>9</sup> The Applicants filed opposition, and several parties filed replies.<sup>10</sup> The issue of the 60-day public comment period required by the Tunney Act, raised in PSC's petition, was rendered moot by the Department of Justice's Final Judgment in the DOJ lawsuit against Verizon Wireless and ALLTEL.<sup>11</sup> In February 2009, PSC filed a Petition for Leave to File Supplement to Petition for Reconsideration. In May 2010, Leap filed a letter to withdraw its petition and RTG filed a letter to withdraw a portion of its petition.<sup>12</sup> In

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<sup>7</sup> See *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17546-47 ¶ 233.

<sup>8</sup> See *id.*

<sup>9</sup> See generally Chatham Avalon Park Community Council Petition for Reconsideration, WT Docket No. 08-95 (filed Dec. 10, 2008) ("Chatham Petition for Reconsideration"); Leap Wireless International, Inc. Petition for Clarification or Reconsideration, WT Docket No. 08-95 (filed Dec. 10, 2008); MetroPCS Communications, Inc. and NTELOS Inc. Petition for Limited Reconsideration, WT Docket No. 08-95, at 14-18 (filed Dec. 10, 2008) ("MetroPCS and NTELOS Petition for Reconsideration"); Public Interest Spectrum Coalition Petition for Reconsideration, WT Docket No. 08-95 (filed Dec. 10, 2008) ("PISC Petition for Reconsideration"); Public Service Communications, Inc. Petition for Reconsideration, WT Docket No. 08-95 (filed Dec. 10, 2008) ("PSC Petition for Reconsideration"); Rural Telecommunications Group, Inc. Petition for Reconsideration, WT Docket No. 08-95 (filed Dec. 10, 2008) ("RTG Petition for Reconsideration"); U.S. Cellular, Carolina West Wireless, Inc., and NE Colorado Cellular, Inc., d/b/a Viaero Wireless filed a petition for reconsideration or in the alternative, clarification. See generally United States Cellular Corporation, *et al.*, Petition for Reconsideration, or in the Alternative, Clarification, WT Docket No. 08-95 (filed Dec. 10, 2008) ("U.S. Cellular, *et al.*, Petition for Reconsideration").

<sup>10</sup> See Joint Opposition to Petitions for Reconsideration by Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC, WT Docket No. 08-95 (filed Dec. 22, 2008) ("Joint Opposition"); Rural Telecommunications Group, Inc. Reply to Opposition to Petitions for Reconsideration, WT Docket No. 08-95 (filed Dec. 29, 2008) ("RTG Reply"); Public Service Communications, Inc. Reply to Joint Opposition to Petition for Reconsideration, WT Docket No. 08-95 (filed Dec. 29, 2008) ("PSC Reply"); United States Cellular Corporation *et al.*, Reply to Opposition to Petition for Reconsideration, or in the Alternative, Clarification, WT Docket No. 08-95 (filed Dec. 29, 2008) ("US Cellular *et al.* Reply"); MetroPCS Communications, Inc. and NTELOS Holdings Corp. Reply To Joint Opposition to Petitions for Reconsideration, WT Docket No. 08-95 (filed Jan. 6, 2009) ("MetroPCS and NTELOS Reply"); Leap Wireless International, Inc. Reply to Joint Opposition to Petitions for Reconsideration, WT Docket No. 08-95 (filed Jan. 6, 2009); Chatham Avalon Park Community Council Reply to Joint Opposition, WT Docket No. 08-95 (filed Jan. 5, 2009) ("Chatham Reply").

<sup>11</sup> See generally DOJ Final Judgment, at 9-10 (filed April 24, 2009).

<sup>12</sup> See generally Leap Wireless International, Inc. Withdrawal of Petition for Clarification or Reconsideration, WT Docket No. 08-95 (filed May 14, 2010). RTG withdrew the portion of its petition for reconsideration that pertained to home roaming because the issue had been resolved by the Commission in Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services, WT Docket No. 05-265, *Order on Reconsideration and Second Further Notice of Proposed Rulemaking*, 25 FCC Rcd 4181 (2010). See (continued....)

August of 2011, the Commission released an order on reconsideration that addressed the foreign ownership issue raised by Chatham in its petition for reconsideration. In that order, the Commission denied the relief sought by Chatham and affirmed that the foreign ownership information that Verizon Wireless had provided in the Verizon Wireless-ALLTEL proceeding was sufficient to demonstrate that Verizon Wireless had remained in compliance with the Commission's previous foreign ownership ruling under section 310(b)(4).<sup>13</sup> This Order on Reconsideration addresses the remaining issues raised by petitioners.

### III. ISSUES ON RECONSIDERATION

#### A. BRS Spectrum

##### 1. Background

5. In the *Verizon Wireless-ALLTEL Order*, the Commission included for the first time certain Broadband Radio Service ("BRS") spectrum in the spectrum screen it applies when evaluating proposed transactions.<sup>14</sup> The Commission noted that previously, it had found, in the context of a nationwide spectrum screen, that sufficient BRS would not be available nationwide soon enough to affect current behavior, and thus, the Commission had declined to include BRS in the initial spectrum screen.<sup>15</sup> The Commission concluded in the *Verizon Wireless-ALLTEL Order*, however, that because it was now revising the spectrum screen to apply on a market-specific, rather than nationwide, basis, and because the BRS transition had now been completed in 337 out of 493 markets, it was appropriate to include BRS spectrum in the market-specific spectrum screen in those markets where the transition had been completed.<sup>16</sup>

6. Several petitioners contend that it was premature to include this spectrum in the Commission's spectrum screen.<sup>17</sup> RTG states that even in the Basic Trading Areas ("BTAs") where the Commission found BRS was available and suitable for the provision of mobile telephony/broadband services, the spectrum was "years away from commercial mobile deployment" due to the lack of compatible equipment.<sup>18</sup> PSC similarly asserts that the BRS spectrum has not been deployed as a mobile

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Letter from Caressa D. Bennet, Counsel for Rural Telecommunications Group, Inc., to Marlene H. Dortch, Secretary, FCC, WT Docket No. 08-95 (filed May 24, 2010). See *infra* section III. B.

<sup>13</sup> See Applications of Cellco Partnership d/b/a Verizon Wireless and Rural Cellular Corporation for Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager Leases, and Petitions for Declaratory Ruling that the Transaction is Consistent with Section 310(b)(4) of the Communications Act, WT Docket No. 07-208, Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC for Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and De Facto Transfer Leasing Arrangements, and Petition for Declaratory Ruling that the Transaction is Consistent with Section 310(b)(4) of the Communications Act, WT Docket No. 08-95, *Order on Reconsideration*, 26 FCC Rcd 11763, 11763-64 ¶¶ 1-2, 11778 ¶ 30 (2011).

<sup>14</sup> See *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17478 ¶ 65. The Commission also implemented this approach, and its application on a market-specific basis, in an order adopted on the same date, granting the applications for transfer of control of licenses and spectrum leases in the BRS and Educational Broadcasting Service ("EBS") in the 2.5 GHz band filed by Sprint Nextel Corp. ("Sprint") and Clearwire Corp. ("Clearwire"). See Sprint Nextel Corporation and Clearwire Corporation Applications for Consent to Transfer Control of Licenses, Leases, and Authorizations, WT Docket No. 08-94, *Memorandum Opinion and Order*, 23 FCC Rcd 17570 (2008) ("*Sprint Nextel-Clearwire Order*").

<sup>15</sup> See *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17478 ¶ 65.

<sup>16</sup> See *id.*

<sup>17</sup> See PISC Petition for Reconsideration at 2-5; PSC Petition for Reconsideration at 9-10; RTG Petition for Reconsideration at 14-16. See also RTG Reply at 6.

<sup>18</sup> RTG Petition for Reconsideration at 15. See also PSC Petition for Reconsideration at 9.

service offering, and mobile equipment is unavailable.<sup>19</sup> PISC argues that because it will take some time before a competitor with BRS spectrum can begin offering service, the inclusion of BRS spectrum in the screen will have significant anticompetitive effects.<sup>20</sup>

7. In opposing these petitions, the Applicants state that the Commission has previously adjusted its spectrum screen based on the Commission's determination that certain spectrum had become "suitable" for the provision of mobile telephony/broadband services.<sup>21</sup> The Applicants argue that the petitioners' arguments are counter to the representations of Sprint and Clearwire, in connection with their separate transfer application proceeding, that BRS and EBS spectrum can rapidly and effectively be used to compete in the mobile services marketplace.<sup>22</sup> The Applicants contend that the petitioners did not present any new facts or material omissions that would warrant a reversal of the Commission's conclusion that where the transition for BRS spectrum is complete, 55.5 megahertz of BRS spectrum is suitable for the provision of mobile telephony/broadband services and should therefore be included in the input market for spectrum.<sup>23</sup>

## 2. Discussion

8. Consistent with the Commission's practice since the *2004 Cingular-AT&T Wireless Order*, the Commission's analysis in the *Verizon Wireless-ALLTEL Order* evaluated which spectrum bands should be included in the spectrum screen in its review of this individual transaction based on the marketplace and technological developments existing at the time of the transaction.<sup>24</sup> For the reasons stated in the *Verizon Wireless-ALLTEL Order*, the Commission included in the spectrum screen those spectrum bands designated for cellular, broadband personal communications service ("PCS"), Specialized Mobile Radio ("SMR"), and 700 MHz spectrum, as well as AWS-1 and 55.5 megahertz of BRS spectrum where available.<sup>25</sup>

9. Petitioners' arguments that mobile services on the spectrum had not yet been deployed and competition might not arise in the near future were previously raised and considered by the Commission.<sup>26</sup> In the *Verizon Wireless-ALLTEL Order*, the Commission concluded that spectrum was a relevant input if it would meet the existing criteria for suitability within two years.<sup>27</sup> Petitioners have presented no new facts or arguments in support of their request that we reconsider this conclusion or the resulting decision to include in the spectrum screen 55.5 megahertz of BRS spectrum, where such spectrum has been transitioned, nor have they shown any error in that decision.<sup>28</sup> Therefore, we deny the

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<sup>19</sup> PSC Petition for Reconsideration at 9.

<sup>20</sup> See PISC Petition for Reconsideration at 3-5.

<sup>21</sup> See Joint Opposition at 10.

<sup>22</sup> See Joint Opposition at 11-12.

<sup>23</sup> See Joint Opposition at 10.

<sup>24</sup> See *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17473 ¶ 53, 17477 ¶ 62. See also Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation For Consent to Transfer Control of Licenses and Authorizations, WT Docket No. 04-70, *Memorandum Opinion and Order*, 19 FCC Rcd 21522, 21560-61 ¶ 81 (2004) ("*Cingular-AT&T Wireless Order*").

<sup>25</sup> See *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17473 ¶ 53.

<sup>26</sup> See *id.* at 17475-76 ¶¶ 59 & nn. 240-41.

<sup>27</sup> See *id.* at 17477-78 ¶¶ 62-65.

<sup>28</sup> We note that the Commission's determination that 55.5 megahertz of BRS spectrum was suitable for mobile telephony/broadband services in those markets where the transition had been completed is further supported by the Commission's findings in the *Sprint Nextel-Clearwire Order*, which was adopted on the same date as the *Verizon* (continued....)

petitions. Our decision is without prejudice to any future action in light of the record established in connection with our recent commencement of a new proceeding to comprehensively review Commission policies regarding mobile spectrum holdings, including the issue and consideration of spectrum suitability in spectrum holdings analysis.<sup>29</sup> In the meantime, we do not preclude finding that revisions to the screen may be necessary as we consider the input market for spectrum in future transactions pursuant to our case-by-case analysis, and in light of any future technological or market-driven developments.<sup>30</sup>

## B. Roaming

### 1. Background

10. In the *Verizon Wireless-ALLTEL Order*, the Commission imposed several conditions related to the provision of roaming services by Verizon Wireless to other carriers.<sup>31</sup> The Commission declined to grant a number of requests for additional roaming conditions, however. It found that the roaming conditions already imposed, together with certain divestitures, were sufficient to prevent the competitive harms that the transaction would likely cause in certain geographic markets.<sup>32</sup> It also concluded that commenters seeking the additional roaming conditions had failed to demonstrate that the transaction would cause the potential harms they sought to remedy.<sup>33</sup>

11. Several petitioners request that the Commission expand or clarify the roaming-related conditions. First, MetroPCS and NTELOS seek reconsideration of a condition prohibiting Verizon Wireless from adjusting upward the rates set forth in ALLTEL's existing agreements with each regional, small and/or rural carrier for the full term of the agreement or for four years from the closing date, whichever occurs later.<sup>34</sup> MetroPCS and NTELOS argue that the prohibition should last a minimum of seven years to provide sufficient time for the development of LTE networks that might provide

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*Wireless-ALLTEL Order*. In the *Sprint Nextel-Clearwire Order*, the Commission similarly rejected arguments that no 2.5 GHz spectrum should be reviewed under a spectrum screen, finding that New Clearwire would in fact "be using 2.5 GHz spectrum when offering nationwide mobile WiMAX service offerings that will be competing with other existing and planned service offerings from other wireless carriers" and that "Sprint Nextel and Clearwire . . . clearly consider most of the BRS spectrum . . . suitable for the provision of mobile telephony/broadband services." *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17596 ¶ 63; *see also id.* at 17597 ¶ 65.

<sup>29</sup> *See* Policies Regarding Mobile Spectrum Holdings, WT Docket No. 12-269, *Notice of Proposed Rulemaking*, 27 FCC Rcd 11710, 11722-23 ¶¶ 26-29 (2012).

<sup>30</sup> *Id.* n. 59.

<sup>31</sup> Specifically, the Commission conditioned approval on Verizon Wireless (1) honoring ALLTEL's existing agreements with other carriers to provide roaming on ALLTEL's CDMA and GSM networks; (2) offering the option to each regional, small, and/or rural carrier that had a roaming agreement with ALLTEL to keep the rates set forth in that roaming agreement in force for the full term of the agreement, notwithstanding any change of control or termination for convenience provisions that would give Verizon Wireless the right to accelerate the termination of such agreements; (3) offering each regional, small, and/or rural carrier that had roaming agreements with both ALLTEL and Verizon Wireless the option to select either agreement to govern all roaming traffic between it and post-transaction Verizon Wireless; and (4) committing not to adjust upward the rates set forth in ALLTEL's existing agreements with each regional, small and/or rural carrier for the full term of the agreement or for four years from the closing date, whichever occurs later. *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17524 ¶ 178.

<sup>32</sup> *See Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17525 ¶ 179.

<sup>33</sup> *See id.*, 23 FCC Rcd at 17525 ¶ 180.

<sup>34</sup> *See* MetroPCS and NTELOS Petition for Reconsideration at 14-18. *See also Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17522-23 ¶ 175.

competitive roaming alternatives.<sup>35</sup>

12. Next, certain petitioners contend that Verizon Wireless should be required to offer automatic data roaming and home (or “in-market”) roaming.<sup>36</sup> RTG also contends that the Commission should include conditions requiring that Verizon Wireless support ALLTEL’s GSM network for roamers “until data roaming is required” by the Commission or “several carriers offer LTE roaming . . . .”<sup>37</sup> RTG also asks that carriers without an existing agreement be given a right to opt into existing agreements.<sup>38</sup> RTG further seeks clarification that the prohibition on increases in the rates set forth in existing ALLTEL roaming agreements for four years or the length of the agreement also means that Verizon Wireless may not alter any other term of these roaming agreements during that period.<sup>39</sup>

13. In opposition, the Applicants argue that the roaming requests should be rejected as repetitious, contrary to precedent, and unnecessary.<sup>40</sup>

## 2. Discussion

14. We deny the requests for additional or expanded conditions related to roaming. Petitioners offer no new evidence demonstrating that the conditions already imposed do not sufficiently ameliorate the specific harms that might result from the transaction, nor do they demonstrate any error in our decision. Further, we find that the Commission has since addressed petitioners’ general concerns for the availability of reasonable voice and data roaming arrangements in other proceedings. In the 2010 *Roaming Order on Reconsideration*, the Commission modified the automatic roaming obligation that the Commission had previously adopted for voice and related services in 2007 by eliminating the home roaming or in-market exception.<sup>41</sup> In 2011, the Commission adopted an obligation applicable to all providers of commercial mobile data services to offer data roaming arrangements to other such providers on commercially reasonable terms and conditions.<sup>42</sup> We find that these generally-applicable roaming obligations in our rules adequately address any remaining general roaming related concerns. These rules directly address requests for data and in-market roaming, ensure Verizon Wireless will be subject to voice and data roaming obligations pursuant to our rules even after the expiration of the four-year condition, provide rights to new entrants as well as providers with existing arrangements, and effectively moot RTG’s request for mandated GSM support “until data roaming is required.” In these circumstances, we are not persuaded to reconsider the Commission’s conclusion that the numerous roaming conditions imposed, together with other non-roaming conditions adopted, are “sufficient to prevent the significant

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<sup>35</sup> See MetroPCS and NTELOS Petition for Reconsideration at 16-18. See also MetroPCS and NTELOS Reply at 2-5.

<sup>36</sup> See MetroPCS and NTELOS Petition for Reconsideration at 18-22 (data roaming); PSC Petition for Reconsideration at 11-14 (data and home roaming).

<sup>37</sup> RTG Petition for Reconsideration at 5-8.

<sup>38</sup> See *id.* at 14.

<sup>39</sup> See RTG Petition for Reconsideration at 8-12. See also MetroPCS and NTELOS Reply at 5-7.

<sup>40</sup> Joint Opposition at 4-9.

<sup>41</sup> See Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services, WT Docket No. 05-265, *Order on Reconsideration and Second Further Notice of Proposed Rulemaking*, 25 FCC Rcd 4181 (2010).

<sup>42</sup> Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services, WT Docket No. 05-265, *Second Report and Order*, 26 FCC Rcd 5411 (2011), *pet. for reconsideration pending*.

harm that this transaction would likely cause in certain geographic markets.”<sup>43</sup>

15. We also deny RTG’s request to clarify the scope of the four-year condition. To the extent that disputes over an application of the relevant condition arise, we will address them on a case-by-case basis. We note, however, that the period during which carriers with pre-existing arrangements have special rights has in any case now expired for most if not all such carriers, and that no such dispute has been brought before the Commission. The issue is therefore largely, if not entirely, moot.

## C. Universal Service Support

### 1. Background

16. In the *Verizon Wireless-ALLTEL Order*, the Commission conditioned the approval of the proposed transaction on Verizon Wireless’s voluntary commitment to phase down competitive ETC high cost support over five years.<sup>44</sup> The Commission declined to impose a condition that, prior to receipt of such funding, Verizon Wireless demonstrate costs of providing universal service.<sup>45</sup> The Commission noted that it was considering this issue, along with others, in a rulemaking on comprehensive high-cost universal service reform.<sup>46</sup>

17. U.S. Cellular, *et al.* request that the Commission clarify that, as of the effective date of the *Verizon Wireless-ALLTEL Order*, Verizon Wireless’s federal high-cost support be fixed, on a state-by-state basis, and reduced by 20 percent.<sup>47</sup> These petitioners also request that on each anniversary thereafter, Verizon Wireless’s support in each state be reduced by 20 percent from the initial fixed amount.<sup>48</sup> U.S. Cellular, *et al.* state that clarifying how Verizon Wireless’s step-down will operate will bring certainty to all ETCs operating in the numerous states where Verizon Wireless and ALLTEL operations overlap.<sup>49</sup>

18. The Applicants state it is not necessary to revisit the Commission’s decision that conditions the approval of the transaction on Verizon Wireless’s voluntary commitment to phase down competitive ETC high cost support over five years.<sup>50</sup> The Applicants contend that the *Verizon Wireless-ALLTEL Order* does not impose limits on Verizon Wireless’s flexibility in implementing the staged ETC funding reductions.<sup>51</sup> The Commission’s decision, the Applicants argue, is consistent with the flexibility afforded to all other carriers in the competitive Commercial Mobile Radio Services market to make judgments regarding whether or not to seek ETC funding in particular markets based on dynamic conditions.<sup>52</sup>

### 2. Discussion

19. We find that it is unnecessary to grant U.S. Cellular, *et al.*’s request to further clarify

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<sup>43</sup> *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17525 ¶ 179.

<sup>44</sup> *See Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17532 ¶ 197.

<sup>45</sup> *See id.*

<sup>46</sup> *See id.*

<sup>47</sup> *See* U.S. Cellular, *et al.* Petition for Reconsideration at 5-6. *See also* U.S. Cellular, *et al.* Reply at 9-10.

<sup>48</sup> *See* U.S. Cellular, *et al.* Petition for Reconsideration at 5-6. *See also* U.S. Cellular, *et al.* Reply at 9-10.

<sup>49</sup> *See* U.S. Cellular, *et al.* Petition for Reconsideration at 7.

<sup>50</sup> *See* Joint Opposition at 21-24.

<sup>51</sup> *See* Joint Opposition at 24.

<sup>52</sup> *See id.*

how Verizon Wireless must phase down its competitive ETC high cost support over five years. The Commission has subsequently provided “clear instructions” as to the methodology for phasing down Verizon Wireless’s high-cost support in connection with this commitment in the *Corr Wireless Order*,<sup>53</sup> and there is no need to provide further clarification addressing the competitive ETC phase-down issues.<sup>54</sup>

#### D. Network Openness

##### 1. Background

20. In the *Verizon Wireless-ALLTEL Order*, the Commission rejected PISC’s requests that the Commission impose various open network conditions. More specifically, it denied the requests to extend application of Verizon’s Open Development Initiative (“ODI”),<sup>55</sup> as well as the Commission’s Upper 700 MHz C Block open platform requirements,<sup>56</sup> finding that PISC had not demonstrated that the proposed transaction would cause the potential harms that it sought to remedy and that these requests were not transaction-specific.<sup>57</sup> The Commission also declined to impose as a condition the principles in the Commission’s *Internet Policy Statement*.<sup>58</sup>

21. In PISC’s petition for reconsideration, PISC states that Verizon Wireless’s acquisition of the Upper 700 MHz C Block in Auction 73, its announcement of the ODI, and its proposed acquisition of ALLTEL obligate the Commission to revisit its decision to limit the open platform requirement to the Upper 700 MHz C Block.<sup>59</sup> PISC also asserts that Verizon Wireless will use its increased market power to force equipment manufacturers to forgo the open C Block “in favor of more closely controlled aspects of the Verizon Wireless-ALLTEL network.”<sup>60</sup> PISC also argues that the *Adelphia Transaction Order* establishes that the Commission will weigh concerns raised in the record regarding the ability of network operators to encroach on the four Open Internet principles in its public interest analysis, and asserts that the Commission failed to do so in this case.<sup>61</sup>

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<sup>53</sup> High-Cost Universal Service Support, Federal-State Joint Board on Universal Service, Request for Review of Decision of Universal Service Administrator by Corr Wireless Communications, LLC, WC Docket No. 05-337, CC Docket No. 96-45, *Order and Notice of Proposed Rulemaking*, 25 FCC Rcd 12854, ¶ 1 (2010) (*Corr Wireless Order*).

<sup>54</sup> We note that the Commission more recently adopted a plan to transition all competitive ETC funding to the Connect America Fund over a five-year period beginning July 1, 2012. This action did not affect Verizon Wireless’s obligations pursuant to its phase-down commitment made in this proceeding. See *Connect America Fund et al.*, WC Docket No. 10-90 *et al.*, *Report and Order and Further Notice of Proposed Rulemaking*, 26 FCC Rcd 17663, 17832-33 ¶ 520 (2011), *pets. for review pending sub nom. In re: FCC 11-161*, No. 11-9900 (10th Cir. filed Dec. 18, 2011).

<sup>55</sup> See *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17528-29 ¶ 188. PISC requested that the Commission mandate that Verizon Wireless extend ODI to all its services and that Verizon Wireless tie ODI to specific benchmarks. *Id.*, 23 FCC Rcd at 17528 ¶ 186.

<sup>56</sup> See 47 C.F.R. § 27.16.

<sup>57</sup> See *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17528 ¶ 188. See also Service Rules for the 698-746, 747-762 and 777-792 MHz Bands *et al.*, WT Docket No. 06-150 *et al.*, *Second Report and Order*, 22 FCC Rcd 15289, 15361 ¶ 195 (2007).

<sup>58</sup> See *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17529 ¶ 191. See generally *Internet Policy Statement*, 20 FCC Rcd 14986 (2005).

<sup>59</sup> See PISC Petition for Reconsideration at 7.

<sup>60</sup> PISC Petition for Reconsideration at 7-8.

<sup>61</sup> See PISC Petition for Reconsideration at 8.

22. The Applicants argue in opposition that because PISC had not demonstrated a specific harm that would necessitate imposing its proposed open network conditions, the Commission should once more decline to require PISC's proposed conditions.<sup>62</sup>

## 2. Discussion

23. Based on the record before us, we deny PISC's request for reconsideration of the open platform, ODI, and open network conditions. PISC has not provided any new evidence warranting the imposition of PISC's proposed conditions, or demonstrated any error in our decision.<sup>63</sup> As we previously concluded, the proposed conditions are not narrowly tailored to any harm specific to this transaction.<sup>64</sup> We are also not persuaded by PISC's argument that the Commission's decision was inconsistent with its approach in *Adelphia Transaction Order*.<sup>65</sup> The Commission in *Adelphia* similarly rejected such a condition, finding a failure to demonstrate a connection with the transaction under review.<sup>66</sup> Finally, we note that since the petitions for reconsideration were filed in the instant proceeding, the Commission has examined how and to what extent to apply the *Internet Policy Statement* principles to wireless broadband networks in the Open Internet rulemaking proceeding.<sup>67</sup> The Commission has consequently already adopted certain Open Internet rules that apply to all mobile broadband Internet access service providers.<sup>68</sup>

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<sup>62</sup> See Joint Opposition at 14-15.

<sup>63</sup> For example, PISC's argument that Verizon Wireless will use increased market power to force equipment manufacturers to "forgo the open C Block," see PISC Petition for Reconsideration at 7-8, was raised previously and rejected. See PISC Petition to Deny at 13-15 (arguing for open platform condition "as a necessary offset for the increase in market power over wireless equipment manufacturers, wireless application developers, and developers of wireless content"); *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17529 ¶ 188 (finding that open platform condition was not "merger-specific" and "could undermine our goal of not unduly burdening existing services and markets"); see also PISC Reply to Joint Opposition to Petition to Deny, WT Docket No. 08-95, at 6-7 (filed Aug. 26, 2008) ("PISC Reply to Joint Opposition to Petition to Deny"). Similarly, the Commission also considered PISC's argument that the conditions are necessary to ensure the purported benefits of the transaction. See PISC Petition to Deny at 17-18; PISC Reply to Joint Opposition to Petition to Deny at 8; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17529 ¶¶ 190-91.

<sup>64</sup> As the Commission has repeatedly held, we will generally not impose conditions to remedy pre-existing harms or harms that are unrelated to the transaction at issue. See, e.g., *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17463 ¶ 29; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17582 ¶ 22; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 43.

<sup>65</sup> See PISC Petition for Reconsideration at 8.

<sup>66</sup> See Applications for Consent to the Assignment and/or Transfer of Control of Licenses, Adelphia Communications Corporation (and Subsidiaries, Debtors-in-Possession), Assignors, to Time Warner Cable Inc. (Subsidiaries), Assignees; Adelphia Communications Corporation (and Subsidiaries, Debtors-in-Possession), Assignors and Transferors to Comcast Corporation (Subsidiaries), Assignees and Transferees; Comcast Corporation, Transferor, to Time Warner Inc., Transferee; Time Warner Inc., Transferor, to Comcast Corporation, Transferee, MB Docket No. 05-192, *Memorandum Opinion and Order*, 21 FCC Rcd 8203, 8296-8299 ¶¶ 217-223 (2006).

<sup>67</sup> Preserving the Open Internet; Broadband Industry Practices, GN Docket No. 09-191, WC Docket No. 07-52, *Notice of Proposed Rulemaking*, 24 FCC Rcd 13064 (2009).

<sup>68</sup> Preserving the Open Internet; Broadband Industry Practices, GN Docket No. 09-191, WC Docket No. 07-52, *Report and Order*, 25 FCC Rcd 17905 (2010) (*Open Internet Order*); 47 C.F.R. § 8.1 *et seq.* We note that several of the members of PISC also filed comments in the Open Internet proceeding. See, e.g., Comments of Free Press, GN Docket No. 09-191, WC Docket No. 0-52 (filed Jan. 14, 2010); Reply Comments of Center for Media Justice, Consumers Union, Media Access Project, and New America Foundation, GN Docket No. 09-191, WC Docket No. 0-52 (filed Apr. 26, 2010).

## E. Handset Availability and Exclusive Handset Agreements

### 1. Background

24. In the *Verizon Wireless-ALLTEL Order*, the Commission denied requests that it impose a condition prohibiting exclusive handset contracts, finding the requests were not narrowly tailored to prevent a transaction-specific harm.<sup>69</sup> Several petitioners again contend that the Commission should impose a condition on Verizon Wireless that would prohibit it from entering into exclusive handset agreements with any manufacturer<sup>70</sup> or alternatively, require that Verizon Wireless create an exception to its exclusivity agreements to allow Tier III wireless carriers to purchase those handsets for consumers in rural markets.<sup>71</sup> The petitioners argue that it is not in the public interest for the Commission to wait to address handset exclusivity in an industry-wide rulemaking because post-transaction, Verizon Wireless would be allowed to demand exclusive arrangements for handsets that would prevent smaller and rural wireless providers from providing those handsets to rural consumers.<sup>72</sup>

25. The Applicants argue in opposition that the harms that the conditions seek to address are not transaction-specific and an obligation aimed only at Verizon Wireless would hamper its ability to compete in the marketplace.<sup>73</sup>

### 2. Discussion

26. We decline to impose the conditions proposed by petitioners regarding handset exclusivity arrangements in connection with this transaction based on the record before us. Petitioners argue that a condition banning such arrangements is necessary to prevent harms from handset exclusivity until such time as the Commission addresses the matter in a rulemaking, but they do not demonstrate that such harms are transaction-specific. Both prior to and subsequent to the *Verizon-ALLTEL Order*, the Commission has uniformly declined to impose similar handset exclusivity conditions in the context of a transaction, finding that such conditions were not narrowly tailored to address a transaction-specific harm.<sup>74</sup> Consistent with this precedent, we similarly find that the proposed conditions on handset exclusivity arrangements are not narrowly tailored to any harm specific to this transaction.<sup>75</sup>

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<sup>69</sup> See *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17527-28 ¶ 185.

<sup>70</sup> See PSC Petition for Reconsideration at 14-15; RTG Petition for Reconsideration at 16–18. See also MetroPCS and NTELOS Reply at 8-9. See also PSC Reply at 4-5; RTG Reply at 7-9.

<sup>71</sup> See RTG Petition for Reconsideration at 17-18.

<sup>72</sup> See RTG Petition for Reconsideration at 17-18; PSC Petition for Reconsideration at 14-15; MetroPCS and NTELOS Reply at 8-9. MetroPCS and NTELOS also argue that the petitioners' proposed handset exclusivity condition is particularly important as it relates to LTE handsets. See MetroPCS and NTELOS Reply at 8-9.

<sup>73</sup> Joint Opposition at 12-13.

<sup>74</sup> See, e.g., *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17607 ¶ 95; Applications of AT&T Inc. and Centennial Communications Corp., WT Docket No. 08-246, 24 FCC Rcd 13915, 13972 ¶ 141 (2009) (*AT&T-Centennial Order*); Applications of AT&T Inc. and Cellco Partnership d/b/a Verizon Wireless, WT Docket No. 09-104, *Memorandum Opinion and Order*, 25 FCC Rcd 8704, 8749 ¶104 (2010) (*AT&T-Verizon Wireless Order*"); see also Application of AT&T Inc. and Qualcomm Incorporated For Consent to Assign Licenses and Authorizations, WT Docket No. 11-18, *Order*, 26 FCC Rcd 17589, 17622 ¶ 79 (2011) (*AT&T-Qualcomm Order*) (finding that proposed handset exclusivity ban was "not transaction-specific and [does] not address the potential harms identified above."); Applications of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC and Cox TMI, LLC for Consent to Assign AWS-1 Licenses, *et al.*, WT Docket No. 12-4, *Memorandum Opinion and Order and Declaratory Ruling*, 27 FCC Rcd 10698, 10734 ¶ 94 (2012).

<sup>75</sup> We also take note that, subsequent to the pending petitions and in response to a request from small providers, Verizon Wireless publically committed in a letter sent July 17, 2009, to Congressman Rick Boucher to limit the (continued....)

## F. Additional Divestitures

### 1. Background

27. In the *Verizon Wireless-ALLTEL Order*, the Commission carefully analyzed the competitive impacts of the transaction in 118 of the 218 Cellular Market Areas (“CMAs”)<sup>76</sup> identified by the initial spectrum and HHI screens (excluding the 100 CMAs that Verizon Wireless had already voluntarily committed to divest).<sup>77</sup> It found five CMAs in which case-by-case analysis indicated that competitive harm was likely as a result of the transaction, and concluded that with the divestiture of these five as well as the 100 markets already agreed to by Verizon Wireless, along with the other conditions it imposed, the transaction would serve the public interest.<sup>78</sup>

28. PSC argues that the Commission should require Verizon Wireless to divest six additional markets in Georgia, Alabama, and Idaho as a condition of Commission approval.<sup>79</sup> PSC argues that divestiture of these markets is warranted because of the level of spectrum and market concentration that would result in these markets from the transaction.<sup>80</sup> PSC also contends that the divestiture of these markets is also necessary “to allow the ultimate purchaser [of other markets being divested] to operate a viable cellular system that will compete effectively against Verizon[.]”<sup>81</sup>

29. In response, the Applicants assert that the Commission’s competitive market-by-market review demonstrated that the six additional divestitures proposed by PSC are not necessary.<sup>82</sup> The Applicants state that PSC has not provided a basis for these additional divestitures that has not already been considered and rejected by the Commission’s competitive review of the markets at issue in the Verizon Wireless-ALLTEL transaction.<sup>83</sup>

### 2. Discussion

30. As described above, the Commission considered and addressed whether competitive harm requires divestitures in the markets specified.<sup>84</sup> We find PSC’s arguments do not warrant reconsideration of the Commission’s conclusions with regard to these markets. Although PSC argues that the Commission did not adequately consider the impact of the resulting spectrum and market

(Continued from previous page) \_\_\_\_\_

application of any new handset exclusivity arrangement to small providers to a period of no more than six months. See “Verizon Wireless CEO’s Letter to Boucher,” <http://blogs.wsj.com/digits/2009/07/17/verizon-wireless-ceos-letter-to-boucher/>.

<sup>76</sup> CMAs are the areas in which the Commission initially granted licenses for cellular service. See 47 C.F.R. § 22.909.

<sup>77</sup> See *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17487-88 ¶ 91.

<sup>78</sup> See *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17515-17 ¶¶ 157, 159.

<sup>79</sup> See PSC Petition for Reconsideration at 5-10. See also PSC Reply at 5-7. Specifically, PSC requests the following additional CMAs be divested: CMA 153 (Columbus, GA-AL), CMA 311 (AL 5 – Cleburne), CMA 314 (AL 8 – Lee), CMA 375 (GA 5 – Haralson), CMA 392 (ID 5 – Butte), and CMA 393 (ID 6 – Clark).

<sup>80</sup> See PSC Petition for Reconsideration at 5-6, 8-9.

<sup>81</sup> PSC Petition for Reconsideration at 6-7; see also PSC Reply at 5-6.

<sup>82</sup> See Joint Opposition at 17-20.

<sup>83</sup> See Joint Opposition at 19-20.

<sup>84</sup> Of the markets for which PSC seeks divestiture, five of the six markets (CMAs 153, 314, 375, 392, and 393) triggered the Commission’s initial screen and were therefore subject to case-by-case competitive analysis. See, e.g., *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17493-94 ¶¶ 108-09 (analyzing CMA 314); see also *id.* at App. C (listing markets identified by the initial screen).

concentration on competition in the relevant markets, it does not demonstrate any error or omission in the Commission's analysis.<sup>85</sup> We also note that the DOJ, in its review, identified 100 markets where the proposed merger was likely to substantially lessen competition and the six markets discussed by PSC were not among them.<sup>86</sup>

31. Aside from its arguments based on spectrum or market concentration, PSC also argues that the Commission's analysis failed to consider a showing that additional divestitures are necessary to ensure that the divested systems offered a purchaser enough population base and other characteristics to be a viable competitor.<sup>87</sup> However, the Commission considered this argument in the *Verizon Wireless-ALLTEL Order* and declined to impose divestitures on this basis.<sup>88</sup> The Commission already imposed conditions in the *Verizon-ALLTEL Order* to "ensure that competition will be preserved and promoted in the markets" of the divested properties, specifically requiring that "the entire operating unit of either Verizon Wireless or ALLTEL be divested in the [divestiture] markets[.]"<sup>89</sup> Nothing in PSC's petition demonstrates that the divested systems at issue could not be viably operated by competitors. We note as well that the properties at issue were in fact divested and continue to be operated independently of the other providers in the market.<sup>90</sup> We therefore deny PSC's request for divestitures in the additional markets.<sup>91</sup>

## **G. Right of First Negotiation to Socially Disadvantaged Businesses to Divested ALLTEL Properties**

### **1. Background**

32. In its petition for reconsideration, Chatham argues that in the *Verizon Wireless-ALLTEL Order*, the Commission did not articulate a basis for rejecting Chatham's proposal to impose a condition granting a right of first negotiation for divested Verizon Wireless-ALLTEL properties to socially disadvantaged businesses.<sup>92</sup> Chatham recognizes that the Commission has taken steps to increase

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<sup>85</sup> PSC also asserts that the Commission improperly included BRS in the initial spectrum screen in certain markets, and but for this decision, "it is likely that these markets would have been included in the divestiture requirement." PSC Reply at 6. We address above the arguments that the Commission improperly included BRS in the initial spectrum screen. *See supra* ¶¶ 8-9.

<sup>86</sup> *See Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17458-59 ¶¶ 23-24.

<sup>87</sup> *See* PSC Reply at 5-6.

<sup>88</sup> *See Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17517 ¶ 160 (noting request that divestitures include adjoining population centers "that would allow the purchaser to offer a viable service") (internal quotations omitted), 17518 ¶ 162.

<sup>89</sup> *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17518 ¶ 162. In this context, the Commission also took note that, "to provide greater assurance that the buyer will be an effective competitor, [the Department of Justice] is requiring that certain groups of CMAs be divested to a single purchaser." *Id.*

<sup>90</sup> *See Applications of Atlantic Tele-Network, Inc. and Cellco Partnership d/b/a Verizon Wireless For Consent to Assign or Transfer Control of Licenses and Authorizations*, WT Docket No. 09-119, *Memorandum Opinion and Order*, 25 FCC Rcd 3763, App. A (WTB & IB 2010) ("*ATN-Verizon Wireless Order*").

<sup>91</sup> In its February 2009 filing, PSC notes a press article discussing AT&T's interest in the properties, and argues that "special conditions must be applied . . . to ensure that the divested assets are not simply transferred from one market giant to another . . ." PSC Supplement to Petition for Reconsideration at 2. We reject this argument as repetitious. The Commission already considered and rejected requests that the Applicants be prohibited from divesting any licenses to another nationwide wireless provider. *See Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17517 ¶ 160, 17518 ¶ 162.

<sup>92</sup> *See* Chatham Petition for Reconsideration at 3-6; Chatham Reply at 2-3.

minority ownership in the telecommunications industry and rectify discrimination in the capital markets.<sup>93</sup> It contends, however, that the level of minority and socially disadvantaged ownership in the telecommunications industry remains low and minority-owned businesses face a distinct disadvantage because discrimination hinders their ability to raise capital and therefore establishes a significant barrier to entry.<sup>94</sup> Applicants argue, however, that Chatham has not offered any fact or argument not already fully considered and rejected in the previous transaction review.<sup>95</sup>

## 2. Discussion

33. We deny Chatham's request for reconsideration of the Commission's decision not to impose a condition granting a right of first negotiation for divested Verizon Wireless-ALLTEL properties to "socially disadvantaged businesses." We disagree that the Commission failed to articulate a basis for the rejection of its proposal, among others that sought to impose conditions on "the potential acquirers of and methods for selling the Divestiture Assets." The Commission emphasized that "the qualifications of the entity(ies) acquiring the Divestiture Assets and whether the specific transaction is in the public interest will be evaluated when an application is filed seeking the Commission's consent to the transfer or assignment of the Divestiture Assets."<sup>96</sup> We note that Verizon Wireless has in fact divested the relevant properties after obtaining Commission review and approval, and that any arguments regarding Verizon Wireless's outreach to minority-owned entities in the divestiture process were appropriately addressed in those proceedings.<sup>97</sup> That bidding process included several steps to identify and reach out to small businesses, and businesses owned by minority or socially disadvantaged groups, including waiver of certain procedures applicable to other bidders, and resulted in final bids from three minority-owned entities.<sup>98</sup>

34. In its Petition, Chatham again asserts the benefits of its requested condition, but such arguments do not undermine the Commission's conclusion that with the conditions imposed, the transaction is already in the public interest.<sup>99</sup> In future transactions, the Commission remains free to consider conditions on the divestitures of properties where necessary to mitigate public interest harms,

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<sup>93</sup> Chatham Petition for Reconsideration at 4-5.

<sup>94</sup> Chatham Petition for Reconsideration at 5. Chatham also contends that the Commission recognized the public interest benefits of similar preferences in the *XM-Sirius Order*. See Chatham Petition for Reconsideration at 5-6.

<sup>95</sup> Joint Opposition at 20.

<sup>96</sup> See *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17518 ¶ 162.

<sup>97</sup> See *ATN-Verizon Wireless Order*, 25 FCC Rcd at 3784-3795 ¶¶ 44-65; *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8752-60 ¶¶ 116-133. We further note that Chatham participated in both of these divestiture proceedings, raising arguments that Verizon Wireless took inadequate measures to comply with the Commission's guidance in the *Verizon Wireless-ALLTEL Order* "encourag[ing] Verizon Wireless to consider and implement mechanisms to assist regional, local, and rural wireless providers, new entrants, small businesses, and businesses owned by minorities or socially disadvantaged groups in acquiring the Divestiture Assets and/or accessing spectrum, to the extent possible." See *ATN-Verizon Wireless Order*, 25 FCC Rcd at 3785-86 ¶ 47; *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8753-54 ¶ 119. The Commission considered these arguments and concluded that Verizon Wireless "conducted its bidding process in accordance with the guidance set forth in the *Verizon Wireless-ALLTEL Order*." *ATN-Verizon Wireless Order*, 25 FCC Rcd at 3787 ¶¶ 49, 50; *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8754-55 ¶¶ 121, 122.

<sup>98</sup> See *ATN-Verizon Wireless Order*, 23 FCC Rcd at 3786-87 ¶¶ 48-49, 3791-92 ¶¶ 58-59.

<sup>99</sup> See, e.g., Chatham Petition at 5-6.

including competitive harms, associated with those transactions.<sup>100</sup>

#### IV. ORDERING CLAUSES

35. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i) and (j), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 309, 310(d), the request of Leap Wireless International, Inc. for dismissal of its petition for reconsideration the Memorandum Opinion and Order and the Declaratory Ruling granting the applications for the transfer of control of licenses from Atlantis Holdings LLC to Cellco Partnership d/b/a Verizon Wireless is GRANTED.

36. IT IS FURTHER ORDERED that the request of the Rural Telecommunications Group for partial dismissal of its petition for reconsideration is GRANTED.

37. IT IS FURTHER ORDERED that the request of Public Service Communications, Inc. for Leave to File Supplement to its Petition for Reconsideration is GRANTED.

38. IT IS FURTHER ORDERED that the remaining petitions for reconsideration of the Memorandum Opinion and Order are DISMISSED IN PART AND OTHERWISE DENIED for the reasons stated herein.

39. IT IS FURTHER ORDERED that this Order on Reconsideration SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>100</sup> Chatham argues that the rejection was inconsistent with the *XM-Sirius Order*, in which the Commission's approval depended in part on a voluntary commitment that the Commission found to be "consistent with the Commission's stated goals to promote diversity...." See Applications for Consent to the Transfer of Control of Licenses XM Satellite Radio Holdings Inc., Transferor, to Sirius Satellite Radio Inc., Transferee, MB Docket No. 07-57, *Memorandum Opinion and Order and Report and Order*, 23 FCC Rcd 12348, 12409-11 ¶¶ 134-35 (2008) (*XM-Sirius Order*). The Commission's findings in that transaction, however, do not persuade us that in the instant transaction, the imposition of a mandatory right of first negotiation is necessary to ensure that the public interest benefits outweigh the harms.